IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRP.No. 926 OF 2002(C)

I.A. NO. 1282/1997 IN LAR.49/1988 OF SUB COURT, MANJERI

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REVN. PETITIONER: PETITIONER-CLAIMANT IN THE COURT BELOW.

KUVVAPARAMBIL KUNHIPATHUMMA,
W/O.CHAKKEERI MOHAMMED KUTTY,
NEDIYIRUPPU AMSOM
DESOM,P.O.KONDOTTY,
MALAPPURAM DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

RESPONDENT: RESPONDENT IN THE COURT BELOW

THE DISTRICT COLLECTOR,MALAPPURAM.

GOVERNMENT PLEADER SRI. NOBLE MATHEW.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN, J.

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C.R.P. NO. 926 OF 2002

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DATED THIS, THE 7TH DAY OF APRIL, 2007.

O R D E R

This revision is filed against the order passed by the Sub Court, Manjeri, in I.A. No. 1282/1997 in L.A.R. No. 49/1988, dated 24.11.2001

2. The petitioner's land was acquired under the provisions of the Kerala Land Acquisition Act, some times in 1988. Dissatisfied with the compensation awarded, she filed an application under Section 18 of the Land Acquisition Act seeking reference of the matter to the civil court for adjudication. Eventually, the matter was referred and numbered as L.A.R. 49/1988 before the Sub Court, Manjeri. Since the petitioner absented herself and did not adduce any evidence in support of her claim for further enhancement, an order was passed on 17.9.1988, copy of which was made available to me by the learned counsel for the revision petitioner, which reads as follows:

> "Claimant called absent, set exparte. As there is no evidence on the side of claimant, he is found not entitled to any enhanced compensation. Reference closed. No cost."

3. Thereafter, a decree in terms thereof was also passed which reads thus:

> "This reference coming on this day for final hearing before me and the claimant being called absent set exparte and the defendant not entered into appearance, the court doth order and decree:
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> 1) that the Reference be hereby closed.
> 2). And that there be no order as to costs."

Thereafter, the petitioner filed an application under Order 9 Rule 4 (7)(a) seeking restoration of L.A.R. 49/1988 by filing I.A. 659/1994. The court dismissed the said application recording as follows:

> "Land acquisition reference is not a petition which can be dismissed and restored. Restoration petition is not maintainable."

4. This order was passed as early as in 1995. Thereafter, petitioner filed the present application under Section 151 of the Code of Civil Procedure seeking the same relief of re-opening of L.A.R. 49/1988 along with a petition for condonation of delay, filed under Section 5 of the Limitation Act. The court below, by the impugned order dated 24.11.2001, dismissed the application finding that sufficient reasons are not made out for condoning the delay. Possibly and consequentially, the Interlocutory

Application filed under Section 151 CPC was also dismissed, though a copy of the order is not produced in the case. Petitioner challenges the said order in this revision.

5. According to the petitioner, the court below has not considered the sufficiency of the materials produced for condonation of delay in the proper manner and the dismissal of the application under Section 5 of the Limitation Act is clearly wrong. Learned counsel for the petitioner further submits that though the application under order 9 Rule 9 was dismissed as not maintainable, petitioner's present application filed under Section 151 CPC for re-opening of the case will not be barred. It is also contended that the earlier order passed in the Land Acquisition Reference, setting her ex parte and closing the matter with the observation that she is not entitled for any compensation in the absence of any evidence adduced, virtually is an order dismissing her case and even though she has not filed any appeal therefrom, the subsequent application filed under Order 9 Rule 9 ought to have been entertained. Counsel also submits that even though the petitioner has not challenged the order under Order 9 Rule 9 CPC, dismissing her application, still the present application under Section 151 CPC is maintainable.

6. Heard the counsel and perused the order impugned in the revision petition.

7. While narrating the facts, I have already extracted the relevant portions of the order closing the Land Acquisition Reference Case. On the face of the order closing the case holding that she is not entitled for compensation, whether it is appealable or not is a debatable question. Further, it is not necessary to pronounce a finding on the said issue as it does not arise for consideration int he present revision. So also, the order passed under Order 9 Rule 9 holding that the said application is not maintainable - true, may not be legally correct, in the light of the decision of the Supreme Court in **Rajmani v. The Collector, Raipur** (1996 JT (SC) 1) wherein the apex court held that as against an ex parte award, though appeal would lie under Section 54 of the Act, remedy is also available and that the question could equally be gone into an application filed by the claimant either under Order 9 Rule 9 CPC or under Order 9 Rule 13 or Section 151 CPC. The appropriate provisions that would be applicable to the claimant would be Order 9, Rule 9 read with Section 151 CPC. But the petitioner did have a chance to challenge the said order further in appeal or revision, which she however did not do. It was thereafter that she filed the present application under Section 151 along with a petition for condonation of delay under Section 5 of the Limitation Act. Since the petition under Section 151 was dismissed because the delay was not condoned, the question of maintainability of the application under Section 151 C.P.C. itself does not

arise for consideration in this revision. In other words, the limited question that arose for consideration in the present revision is only as to whether the order dismissing the application for condonation of delay was proper and whether discretion has been exercised by the court below in so dismissing the application. In this regard, the court below has found that the petitioner had entrusted the case with her son; but he did not receive any notice and notice was served by affixture at his house. According to the petitioner, in the absence of any Process Server examined in the case, the court could not have entered a finding regarding proper service of notice. But admittedly, petitioner had moved I.A. 659/1994 under Order 9 Rule 9 for restoration. If that be so, the explanation that there was no notice in the L.A.R. will not hold good in explaining the delay occurred thereafter. According to the revision petitioner, her son went abroad in 1995 again which is not supported by producing any materials on record. It was then the case of the petitioner that she was laid up with rheumatism from 1995 onwards. Ext.A1 document was sought to be proved by examining PW.2 who was not even a registered qualified medical practitioner. The certificate itself was issued only on 1.10.2001. No other documents regarding the nature of treatment given to the petitioner is seen produced. No prescription or bills for purchase of medicines are also produced. Therefore, the court below did not place reliance on the evidence of PW.2 and Ext.A1 and found that the delay

at any rate, subsequent to 1994 up to the filing of the present petition is not properly explained. It is true that each day's delay need not be explained by the petitioner and in such matters a pedantic approach should not be adopted. But however liberal the view could be, I do not find that the delay was explained satisfactorily to show that there was no latches or negligence. It cannot be said that the court did not exercise its discretion after adverting to the materials on record. The court below has exercised its discretion after considering the materials placed on record and the said decision, on the face of it, cannot be said to be one passed without jurisdiction or illegal.

In the above circumstances, the order impugned in the present revision cannot be assailed for any valid reason. I find no merits in this revision. Dismissed.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 926 OF 2002
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O R D E R

DATE: 7TH MARCH, 2007.